

State of South Dakota

EIGHTY-EIGHTH SESSION LEGISLATIVE ASSEMBLY, 2013

348U0111

SENATE CONCURRENT RESOLUTION NO. 3

Introduced by: Senators Lucas, Adelstein, Bradford, Brown, Buhl, Frerichs, Jones, Kirkeby, Olson (Russell), Peters, Rave, Sutton, Tidemann, Tieszen, and Welke and Representatives Cronin, Bolin, Carson, Ecklund, Feinstein, Gibson, Gosch, Hansen, Hawks, Hawley, Hunhoff (Bernie), Lust, Novstrup (David), Parsley, Qualm, Rozum, Schaefer, Schoenfish, Sly, Soli, Solum, Tyler, Verchio, and Wick

1 A CONCURRENT RESOLUTION, Urging the members of the South Dakota Congressional
2 delegation to sponsor and support legislation granting states the authority to require sellers,
3 regardless of nexus, to collect sales and use taxes if certain tax simplification and
4 streamlining thresholds are met by the states.

5 WHEREAS, the 1967 Bellas Hess and the 1992 Quill Supreme Court decisions denied states
6 the authority to require the collection of sales and use taxes by businesses that have no physical
7 presence in the taxing state; and

8 WHEREAS, the ability of consumers to make purchases from remote sellers that have no
9 physical presence has become significantly more accessible via the internet as evident by the
10 \$1.5 billion dollars spent online during the 24-hour period on Cyber Monday. The sales tax base
11 is eroding as consumers are adopting purchasing habits that vary substantially from ten years
12 ago; and

13 WHEREAS, the constraints imposed by the Supreme Court's decisions threaten the future



1 viability of the sales tax as a revenue source for state and local governments in this changing
2 market for consumer goods and services; and

3 WHEREAS, the federal government continues to shift program and financial responsibilities
4 to the states, but the inaction of Congress to permit states to require sales and use tax collection
5 on remote sales limits the states' ability to raise revenues for the funding of such programs from
6 one of the major state revenue sources; and

7 WHEREAS, if Congress were to act on this matter, it would provide some fiscal relief for
8 the states without costing the federal government a single cent or otherwise affect the federal
9 budget; and

10 WHEREAS, the Streamlined Sales and Use Tax Agreement (Agreement) provided the states
11 with one viable blueprint to create a simplified and more uniform sales and use tax collection
12 system. The states and the business community have worked for over ten years to simplify state
13 and local sales and use tax systems by establishing common definitions, sourcing rules, and
14 other factors to provide a streamlined system for the twenty-first century; and

15 WHEREAS, small businesses that have less than one million dollars in gross annual receipts
16 are exempt from the provisions of the Agreement; and

17 WHEREAS, the Legislature of South Dakota and our colleagues in the other states have
18 shown the resolve to acknowledge the complexities of the current sales and use tax collection
19 system, have worked with the business community to formulate a truly simplified and
20 streamlined collection system, and have shown the political will to enact the necessary changes
21 to make the streamlined collection system the law; and

22 WHEREAS, by January 1, 2013, twenty-three states, Arkansas, Georgia, Indiana, Iowa,
23 Kansas, Kentucky, Michigan, Minnesota, Nebraska, Nevada, New Jersey, North Carolina, North
24 Dakota, Oklahoma, Rhode Island, South Dakota, Utah, Vermont, West Virginia, Washington,

1 Wisconsin, and Wyoming, have enacted legislation to bring their states' sales and use tax
2 statutes into compliance with the Agreement; and

3 WHEREAS, the Center for Business and Economic Research at the University of Tennessee
4 has estimated that the states and local governments may lose as much as \$14.8 billion in fiscal
5 year 2012 because they were not able to collect taxes on remote sales, a figure that increases to
6 \$23 billion if phone and mail order sales are included according to the National Conference of
7 State Legislatures, and the Center has estimated that South Dakota will lose as much as \$38.8
8 million in fiscal year 2012, a figure that increases to \$60.8 million if phone and mail order sales
9 are included; and

10 WHEREAS, Congress has the capacity to provide a comprehensive national solution to the
11 sales tax collection by permitting states that are unable to join the Agreement to enact sales and
12 use tax simplifications and thereby granting such states the authority to require collection of
13 taxes on remote sales, thereby removing the potential for competitive advantage among the
14 states; and

15 WHEREAS, Congress has the opportunity to create an environment for fair market
16 competition between traditional and online only retailers which will enable South Dakota
17 businesses to sustain and increase the fifty-two thousand retail jobs throughout the state; and

18 WHEREAS, until Congress and the President enact legislation to permit states to require
19 collection of tax on remote sales, participation by remote sellers will only ever be voluntary
20 making it unlikely that the states will close the sales and use tax gap between what is owed on
21 remote transactions and what is collected; and

22 WHEREAS, the Marketplace Fairness Act of 2013 has been introduced in the United States
23 Senate, and grants those states that comply with the provisions of the Act the authority to require
24 sellers, regardless of nexus, to collect the states' sales and use taxes:

1 NOW, THEREFORE, BE IT RESOLVED, by the House of Representatives of the Eighty-
2 seventh Legislature of the State of South Dakota, the Senate concurring therein, that the
3 Legislature of South Dakota calls upon the members of our congressional delegation, Senators
4 Tim Johnson and John Thune, and Representative Kristi Noem to support legislation addressing
5 market fairness and equity; and

6 BE IT FURTHER RESOLVED, that the Legislature of South Dakota urges President Barack
7 Obama to sign into law legislation granting the states authority to collect sales and use tax on
8 remote sales, upon its passage by Congress.